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C
Shafter

Shafter

Bd. Oct. 1904

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OF THE

DIVINITY SCHOOL

GIFT OF

Rev. John D. Wells
18 Oct. 1893

OB 6498

IN MEMORIAM.

OSCAR LOVELL SHAFTER, L.L.D.

Born in Athens, Vermont, October 19, 1812.
Died in Florence, Italy, January 23, 1873.

MEMORIAL

OF

OSCAR LOVELL SHAFTER,

Being Words Spoken at his Burial by Rev. Dr. Stebbins,
a Sermon Preached on the following Sunday by Rev.
Laurentine
L. Hamilton, a Sketch of his Life and Character,
given before the Supreme Court of California,
by Hon. John W. Dwinelle,
And lines to his memory from the New York Evening Post.

SAN FRANCISCO:
1874.

18 Oct., 1898.

Gift of

Rev. John D. Wells (57)

OSCAR LOVELL SHAFTER,

Late Associate Justice of the Supreme Court of the State of California, died in Florence, Italy, January 23d, 1873. The funeral took place at the First Congregational Church, Oakland, Cal., Sunday afternoon, March 24th, 1873.. The rear dais and the organ loft were beautifully decked with wreaths and festoons of green leaves, immortelles, camelias and white roses. Wreaths were laid on the cover of the casket, and at the head was a large cross, composed of camelias and evergreens. The pall-bearers were S. W. Sanderson, John Currey, A. L. Rhodes, Samuel Merritt, John W. Dwinelle, William T. Wallace, Joseph P. Hoge, J. D. Thornton, Edmond L. Goold, J. B. Crockett and Henry Durant. The services were conducted by Rev. L. Hamilton, of the Independent Presbyterian Church; Rev. H. J. McLean, of the First Congregational, assisting.

The following remarks were made by the Rev. Dr. Stebbins:

Events in the life of the individual man tend to conclusion while society moves on in perpetual process or endless chain. This journey over sea and land, taken up in fear and hope, attended by hovering anxieties of home and filial love, pursued and borne with womanly devotion wherever the Divine signals—in cloud by day and fire by night—directed the faithful footsteps, is ended. So the mariner, storm-tossed and weary, engulfed in many perils in many seas, emerges at length into calm and gentle days, happy winds woo his sails, he spies the eternal headlands that have quieted so many eyes, the good ship rides into port, "he casts the patient anchor, and furls the straightened sail in the haven of his heart."

Whether we consider life as a journey upon the land, with many devious delayings and disappointing passages, or as a stormy voyage upon the sea, there be many that are glad when they arrive at home. Religion surely makes no error when she adopts our deepest human satisfactions, carrying them forward to the future, making that a home. It was no error, but a firm insight and delicate imagination, that said, "I am a stranger on the earth." It is a truly human experience. To

the man worn by toil, burdened with grief, chastened by disappointment, to the man who has lived through this world, gained its meaning, got its leading idea and suggestion, this is not his abiding place. As early ideas of childhood no longer satisfy his mature intelligence, so a world whose import and significance he has caught and appropriated to the uses of moral being, must give way to the nobler ideas of an ever advancing experience. Whether, then, by the weariness of the body, its melted energies, like the rod that is melted by electric fire, or by the aspiring mind and soul, we do outgrow the world and have done with it. We are weary, and long for rest; we are travellers and wish for home. Death is blessing, peace, hope, life.

This was the experience of our friend and fellow-citizen, Judge Shafter. His physical frame had received an irreparable hurt and he could no longer grasp the isolated fact, and bind it in eternal fealty to its principle. The world was no longer useful. Affection might watch with tender fidelity, filial love and gratitude might still find comfort in the happy labors of self-forgetfulness, but life was done, the world was done, and death was the faithful friend to rescue him from the thrall of dissolved powers.

A grateful and appreciative estimate of him as a man, is not commensurate with his external history. An account of any man's circumstances would not be an account of him; for circumstances, powerful as they are, are not the chief element in his being. We cannot divest ourselves of the feeling that the real quality of a man is will, idea, thought, conviction. A man's life and character are in his mind. And the nobler a man is, the less consequence it is where he lived or where died. A universality above all local origin or event pertains to the essential quality of human nature.

God endowed Judge Shafter with a physical and intellectual constitution well fitted to strive with the powers of this world. Energy, endurance of labor, and a kind of mountainous good sense that sees men and things as they are and goes free of all affectation and cant, are the sure and trusty qualities of practical excellence and were eminent in him. He had a kind of human sagacity by which he knew man from any other animal. His judgment moved with ease and self-reliance amid a great variety of circumstances, from the measure of a tree in the forest, to the action of the hour in politics, or the providence of God in human life. He was long-headed. He did not affect

wisdom by much owlish silence, neither did he run to folly through talking over-much. He expressed his opinion with that easy firmness, without show of independence peculiar to feebler natures, but as one to the manor born and at home in the truth.

But these practical abilities—energy, good sense, round-aboutness, and integrity of nature—were by no means the measure of his endowments. His intellectual perceptions were clear, and in his statement of principles he could have have had few superiors. He had that appreciation of the law of laws, the unity and generalization of truth, that gives moral dignity to the intellect and the perspective of moral grandeur to all principles, without which the mind itself becomes frivolous, a mere popinjay clatter of things unreal. When theories of deep human interest were touched, his mind kindled along its summits with fine enthusiasm of poetic feeling and insight. He did not belong to that class of minds always emphatic never forcible, neither to that other class, "small pot soon hot," whose enthusiasm is in the blood and not in the idea. His mind sometimes lay calm, silent, sullen as the summer sea, and rolled with sleepy strength, and in all the manifestations of his intellectual activity, there was something of that repose which is the measure of reserved power and the background of all greatness. He was a pleasant companion and a good talker. I have seen him very happy in the society of children, and touched with true feeling at little expressions of loveliness in the young.

I had the pleasure a few years ago to spend a day with him on the Point Reyes Rancho. I arrived on the ground in the morning, and found him sleeping beneath a little bower that he had made to protect him from the glare of day or the chill of night. I thought of Jonah who built a bower a little way out of the city of Nineveh, and lay there impatiently to see what would come to pass. But a better than Jonah was here. He awoke, gave me cordial greeting, generous as the morning. We shortly took to the saddles and spent the day in riding over the domain, wherever interest, curiosity or excitement led. He was full of vivacity, observation, reflection, feeling. The hills, the valleys, the running water, the shady glen, the wood-bird's note, all attracted his attention, awoke his sensibility. The men all liked him, from the Spanish vaquero, that lingering remnant of a former civilization, to the American boy, taking his first lessons in throwing the stealthy riata. All liked him, yet none were familiar or frivolous

toward him. I got on that day the flavor of his mind and character. A man of great good sense, practical, yet with wide discourse of intelligence and reason; calm, unimpassioned, yet of fine sensibility and true poetic feeling, and his whole nature, by the eternal weight of moral gravity, swinging toward the truth. Thus I understood him.

His religious faith was simple and human. He arrived at his conviction of the character of God from the nature of man, and the experience of human life. He inferred that justice is God's justice, that mercy is God's mercy, that love is God's love; and that the expression of these in humanity is the expression of the divine. I think, in commending himself to the Almighty maker of men, he would, in the devout simplicity of his heart, have forgotten all the honors and respect he enjoyed from his fellow men, and thought only that he was a *man*. He would have said, with Martin Elginbrodde:

> "Here lie I, Martin Elginbrodde;
> Hae mercy o' my soul, Lord God
> As I wad do, were I Lord God,
> And ye were Martin Elginbrodde."

The body was taken to the Oakland cemetery and deposited in the family vault. Among those present, besides the relatives of the deceased, were a very large number of the San Francisco and Sacramento Bar.

O

MEMORIAL DISCOURSE

Delivered March 31, 1873, in the Independent Presbyterian Church, Oakland, by Rev. Laurent Hamilton.

Micah VI, 8. He hath showed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God.

Once in a decade or two of years, we see a life come to a close which has concentrated in itself the progressive thought and experience of the time. The great world-history going on without has its parallel in that which goes on in a single breast. The man measures the time. The features of its progress daguerreotpye themselves essentially in his mind and heart. Beginning by force of circumstances in something that is crudest, he ends by force of inherent truthfulness and grasp of thought in that which is ripest. The brilliant but ephemeral blossoms of spring are soon cast; the more sober but more lasting beauty of summer follows; this changes again into the rich ripeness of autumn—then winter garners the whole growth of the seasons.

Such a life is a beacon of progress to common minds. If one falls under our observation, we slight God's good providence if we neglect to study it. We can see in it if we will, not only where we are, but where we shall be. It is a prophecy of what is coming. In it we see ruling tendencies reach their accomplishment. The forces that are moving in the great complex man we call society, run their course and come to their last result in this individual man. The average man of the future, when humanity has grown tall enough to see as broadly as he sees, will stand where he stood when we last beheld him. He throws light on the questions we debate most in our parlors and shops and lyceums. We see the decision of many of them reached in him, or at least the discussion carried so far as to point the way to their decision. We need not repeat the experiment he has made. We can foresee in him how it will result. The thought of men can step forward to an advanced position over the ground which he has conquered.

We should not be overhasty, indeed, in falling into the lead of great

minds, however great they may be. We should be mindful of the fact that the greatest thinkers in the whole history of thought have been the greatest errorists. So they were honest in purpose we need not reproach their errors. To think in advance of other minds, is to help forward human progress, even if the thinking be mingled with error. To state a great error with power on an unexplored field of thought often leads to the great undiscovered truth that lies directly over against that error. It is only a little more roundabout way to the good thing that humanity needs. So we welcome great *honest* thinkers, whatever the track their minds take. We need not therefore welcome their mistakes. Their mighty conceptions may be but centaurs and hippogriffs: there may be nothing real in nature answering to them. They may be the exceptional outgrowths from the idiosyncrasies of the thinker. They may be the abnormal vagaries of a wrenched and disjointed intellect. They *may be* the voice of God. We should wait for the *verification* of the true test—the common consent of minds great enough to grasp the subject. Watch the *judicial* mind as it comes in contact with the question at issue, the temper calm, the method wise, the process slow and careful, the conclusion deferred until all the evidence is in. When you see this higher order of thinkers, under diverse circumstances and influences, strike off from the old beaten path at different points of departure, and with singular unanimity take some new road that leads to a common conclusion, it is safe for you to predict that the *many* will soon turn into their course of direction. It may not lie exactly along the line of absolute truth, but it is more nearly parallel to that line than the old track. Humanity never again takes its onward march along the old road. A few stragglers may stumble on in that way for a time, but their thinning number soon find the loneliness intolerable.

Eminent among this higher order of minds stood the late Judge Shafter. He was a type of the time. He ran through the progress of the age in his own experience. He began in the crudest thought; that he ended in the most advanced I am not competent to say, but that he had reached a point far in advance of the multitude, there is abundant testimony more conclusive than mine. Hence the special public value of his life. Few examples will better repay our study. I should not be excused if I failed to use the occasion to gather up some of its rich suggestions.

My object is not panegyric. The Bench, the Bar and the Pulpit

have united in his eulogy. I fear I should weaken what has been said with power by any additions I might attempt to make. Nor will I attempt an exhaustive analysis of his character. It would be too presuming in me. I leave that to more familiar and more skillful hands. My object is rather to turn your attention toward those phases of his many-sided thought and experience which look towards our work as a christian congregation and our want as christian men and women seeking after the truth of God.

He was born at Athens, Vermont, October 19, 1812. His father was a man of much force of character and large influence with his neighbors,—"successively farmer, merchant, county judge for several years, Liberty party candidate for Governor, more than quadrupling the vote of his party, then member of the Constitutional Convention of 1836 and member of the State Legislature." In religious faith and connection he was a Methodist. His mother was a woman of rare intelligence and force of character. At an early age death deprived him of her counsels, but he cherished her memory with a deep and tender reverence. At about fourteen he was placed at a Methodist academy in Wilbraham, Mass. It was during his several years of study at this institution that he was caught in a whirlwind of religious excitement—as he would describe it afterwards,—"was struck with conviction," "went forward to the anxious seat," "had great wrestlings with the spirit," and "got converted." For six months his zeal knew no abatement. He was "instant in prayer and exhortation, in season and out of season," prompt at the class-meeting, and was pointed out as a model. But his inner life did not run smoothly. He suffered torturing doubts. He felt that his religion was artificial—a striving after moods, feelings, fervors, raptures. Somewhat abruptly he came to the conclusion that this was not being honest with himself or with others. He went straight to the Church and told them so, and that he could go no further with them. Henceforth he will be true to himself if his soul is lost for it. If any religion wants him to be less than that, so much the worse for the religion. He completed the prescribed course in his school, took a tramp into New York State, where, I believe, he had a little practice in school teaching, then returned and entered the Methodist University at Middletown, Connecticut. From this he graduated in due time, studied law at Cambridge, then went back to Vermont to commence its practice. His powers soon

placed him in the foremost rank of his profession in his native State.* His coming to this State in the Fall of 1854, the immediate recognition of his abilities, his law partnerships with the first legal talent of the State, his firm stand as an anti-slavery man when the name of "Black Republican" was a reproach, his self-consistent adherence to this stand

* The following, evidently written *calamo currente*, is taken from his diary of Jan. 26, 1855, and shows that wonderful fertility of mind to which the commonest object will suggest a rich train of reflections:

"There is a thing put into my hand by my friend—it is a book. I have never read it, nor have I ever seen it before. It at first engages my attention as a material thing merely. In that regard I examine its exterior—its binding and lettering and gilding. I open it and the paper and the typography become subjects of inquiry and thought. So far, even what a vast range of knowledge is needful in order that I may understand, appreciate and relish the naked facts that I have learned. The art of book-binding since books were first known; the progress of that art through a long succession of ages terminating in the present. Printing in its first discovery or invention; printing in all the modes and styles that have since obtained; the names of the printers by whom they have been originated or practiced; printing as connected with the presses with which it has been carried on in different nations and in the different times, and all the wonderful improvements that have been made in the press considered as a means—these and a thousand other matters are needful for me to know in order that I may comprehend what I have already observed, *in their great import*. Thought as it first arose in the mind of the inventor, its slow and labored development in his toiling brain, until the ideal that he was struggling for stood revealed in matured conception—and then the protracted and wearisome endeavor to realize that thought under material forms; the conflict with obstacles never ended, or if ended, still ever to be renewed; the fierce, exhausting strife with human ignorance and human passions; the discouragements of penury, the alternations of hope and despair, and the often encounters of each with the other—*the whole biography* of the wonderful men who in spite of such odds at last achieved for the ages in which they lived the great triumph of modern civilization; how their achievements acted upon other minds to stimulate them to like endeavor; the effects produced by their inventions or discoveries upon the times in which they lived, and the mightier consequences that were developed in ages following. These, yes, all this great context if *known to me*, will invest with marvellous interest, I ween, the book considered simply as a material thing. To fully compass it in *that* regard, of how very little of general history can I afford to be ignorant!

"But to understand, appreciate and relish the contents of the book, as I peruse them, the whole range of history, biography, science, art and general literature, should be as familiar to me as early lessons. The new production of human thought stands related to all that thought has originated or combined before; and the threads that the author has spun, he has woven in a thousand nameless and marvellous methods, into the mighty woof of previously associated ideas."

through all the exciting scenes that followed, his gradual rise into the notice and confidence of the people, his election to the Supreme Bench of the State in 1863, his unimpeachable and even unsuspected integrity as well as ability in that position for four years, then the sudden failure of his health compelling his resignation, his efforts for recovery, the long wavering of his friends between hope and fear—the hope growing fainter, the fear verging towards sad certainty—till the final word flashed under the sea from a foreign city telling us that the end had come and the great soul had taken his place among the Immortals—all this has been made as household matters to you by the public press.

It falls not in with my purpose to dwell longer in detail upon the events of his life. I have now to speak of Judge Shafter's religion.

Like the Prophet, he had sought to "know the righteousness of the Lord"—had asked, "Wherewith shall I came before the Lord and bow myself before the high God?" The spirit of "technical" religion, busy in our day as in the day of the Prophet, with its arbitrary rules and tests and exactions, had told him that it must be with some special sacrifice, some self-mortification of the reason, some unquestioning beliefs that commended not themselves to his judgment, some special experience, coming in mystery and fed by a faith that he dare not criticise. He had thought long and earnestly, with the simple desire to know the truth. He had come to the same conclusion with the Prophet, "He hath showed thee, O man, what is good; and what doth the Lord require of thee but to do justly, and to love mercy, and to walk humbly with thy God." Here is the universal religion, good for all ages, for all races and ranks of men. We may assure ourselves that it will stand good while the world stands. To walk in justice, mercy and humility before God, saves the soul. It makes the Christian. Judge Shafter believed this. To say that some special belief or mystical experience must be added, he held as the cant of a technical faith. Justice, Mercy and Humility are the rock. The conceits of formalists and pietists are the ever changing mists that hang over it, sometimes, as seen from the dim distance, mimicking the rock in form and appearance, but never attaining its stability—ever disappointing as you approach and attempt to find firm foothold thereon. He never returned to the bosom of the Methodist Church. And why? Was it because of prejudices? These were

rather in favor of that Church. The memory of his revered mother, his dearest educational associations, some of his most intimate friends, drew him towards her communion. Was it from personal hostility to religion? He was a devout worshipper of God. As his writings abundantly showed, he was what the Church would call a "man of prayer." At every piece of good news or instance of unusual prosperity there is a heartfelt expression of thankfulness to the Divine source of blessing. When sad tidings came or calamity befel, he turned to his closet, his Bible and his God for strength and comfort. And no puritan with his catechism was more diligent in the family than he in inculcating the great truths of religion, reverence towards God and love to man. This never ceased till disease broke his strength. The world may have given him little credit for his religion. He did not wear it on the outside for show. It was in the heart, in the honest doing of the work given him to do, and in quiet deeds of goodness to men. The Church sometimes called him an infidel. His piety did not run in the channel of her ceremonies or bear the stamp of her dogmas. Will God reject pure love for that reason?

It was for none of the causes suggested that he declined returning to the bosom of his mother's Church. It was because, *as an honest man he could not.* He loved the truth; he was seeking the truth; he was ready to receive it wherever he could find it; he was ready to do whatever it exacted of him; but he could not find the truth in its highest and purest form in that Church. *The love of truth kept him out of the Church.* She exacts much, as he believed, that God does not exact. She teaches along with much that is good, some things that are an offence to reason and a dishonor to God. His great mind could stop short of no other conclusion. And the Methodist Church is not to be singled out as peculiar in this. The other sects prominent among us occupy common ground with her so far as his objections went. None of them could make room for him.

This is to me the most impressive suggestion of his greatness and goodness. The Churches must make room for such a man, or that grand day of broader light that hastens on will have no room for them.* Educate a people till they love the truth as well, and can

* "When creeds are employed so that men of blameless lives, of holy and pure

see as broadly as Judge Shafter did, and they will not go into our churches *as they are*. These churches might easily make room for such. They *must* revise their standards, and purge them of those absurdities, which the broadly educated mind can never look upon as other than absurdities. Germany is saying this to us to-day; Oxford is saying it; Cambridge is saying it; Yale is saying it. Every center of learning and superior intelligence in Christendom is saying it. The guild of scientific men all over the world, with an approach to unanimity that ought to be alarming to one who really loves the Church and sees its importance, are saying it. It is a question of life and death with the Church. Her teachers may shut themselves up in their little circle of thoughts and deny that there is any broader flow from the Fountain of Eternal Truth, but the mightier minds of the world, that, like Judge Shafter, have swept through their lines, and out into the ocean that rolls all around them, will see their mistake, and will never, never strike back towards the centre of darkness and ignorance for the sake of sailing in their company.

Scan the life of this man, put his character under the test of the closest scrutiny, make the most of his imperfections common to our nature or peculiar to him, and then say in view of the pure and exalted character you are compelled to confess he bore, whether he is to be placed outside the pale of christianity; or if he is, whether any thing ought to be left inside that the world has much reason to value. The text seems to me to epitomize his virtues—" do justly, love mercy, and walk humbly with thy God." His life filled out this "Table of Contents."

He was a *just* man. Take this passage from his own writings as illustrating the sentiment on which this virtue is based. I shall be excused for quoting it although it was intended only for the eye of his own family. He is writing for the benefit of his own little boy—alas! soon after called to another world, blasting the hope and almost

dispositions, cannot abide in the church, unless they assent to them against their convictions, then they are anti-Christian, despotic, and most mischievous. For no creed can be rightly held which condemns a man whom God loves, whose life is redolent of Divine grace, and whose good will and rectitude are open before God and man. If any creed is not large enough to take in such a man, it is the worse for the creed, and not for the man."—[Extract from a sermon by Henry Ward Beecher, preached in Plymouth Church, December 11, 1859.]

breaking the heart of the fond father. He says: "I trust, also, that my boy will be a *good* lawyer, which is the same thing as saying, 'I trust he will be a good man'—free from all chicanery, honest in his dealings with court and jury, and perfectly truthful in all his relations to his clients. There is no calling in which a strict obedience to the maxim that 'honesty is the best policy,' is more available. A rogue of an attorney is sure to reveal himself in his true character, and then there comes at once from all honest men a retribution of distrust, aversion and contempt; and no matter what may be his learning or his talents, a withdrawal of business inevitably follows the withdrawal of confidence." This was the sentiment upon which he based his practice as a lawyer not only, but as a man. If he was rigid in exacting what was due him from others (as all successful business men must be as a rule) he was equally rigid in giving their dues to others. As a Judge his impartiality commanded a confidence that was well nigh perfect. The suspicion of a bribe never rested on him. There was something in the man that corruption dared not approach. It would have instinctively forecast its own discomfiture and stern rebuke.

He was also merciful. I have no motive for saying that he did not love money; by admitting that fact I only strengthen the proof of the intensity with which he "loved mercy." He gave without ostentation, but liberally and continuously. Worthy want never turned away from him empty. Struggling merit had numerous occasions to bless his bounty. Sometimes his friends thought he was lavish in gifts where the worthiness of the object was questionable. His reply was that he feared mistake and would rather give to the unworthy than to let real want go unrelieved. It was a maxim with him that, "If you would keep the sympathies fresh and the heart green, you must keep giving; if you stop you shut up and rust, like an old jack-knife which no one can get open." Quaintly put, but a mighty truth. He blessed himself in its practice. His generosity did not stop with tens of dollars, nor with hundreds, nor with thousands, nor with tens of thousands—although he took no pains that the public at large should hear of its extent. One who had the best opportunity to know writes of him, "I know personally of tens of thousands of dollars disbursed by him without any hope of return."

I think we may truthfully add, also, that he crowned his other virtues by walking humbly with his God. We have already said that his

religion did not run in the channels of the Church. It did not stop with duties to man nevertheless; it took direct hold on the Divine Love in reverent trust and worship. He has left on record the expression of his sense of dependence on God as he entered upon the duties of that high position to which the people had called him, and his solemn resolution in their discharge to trust in God and commit the vindication of his judgments that might displease, to the Infinite Judge and the coming time. That resolution was severely tried when he felt bound to decide an exciting question against the interests of his own party and against his own personal feelings. But appeal to a higher Tribunal gave him an early vindication. At the noon of his powers and after he had come to this State, I hear him accusing himself of having too much neglected the reading of his bible, and expressing his wonder at the power with which its utterances came home to his heart in his peculiar circumstances here. He tells us also of a new light of immortality breaking in upon his mind on one occasion while he knelt in prayer. Here is proof also of the keen appreciation with which he read the Divine Word, in a comment on that verse of a Psalm which reads, "Stand in awe and sin not; commune with thy own heart upon thy bed and be still." "Crawl not like a worm—stagger not like one in delirium—fly not like a coward—but stand—erect and firm. But stand in *awe*. How much is there to awe the heart of man in the visible creation—in the earth and in the heavens! But in the contemplation of himself there may be revealed to him deeper mysteries and a yet greater glory, visiting him with an awe yet more profound. But more than for all these he should 'stand in awe' for he standeth ever in the presence of God."

Here are words of solemn grandeur, bursting spontaneously from a soul that felt all they speak. Was this man an infidel?

Judge Shafter was thought by some to be a man of hard, cold logic, as the chief characteristic of his mental constitution. Nothing could be a greater mistake.* He was severely logical in his mental processes;

* The following is a portion of a letter written to Mrs. Shafter a few weeks after receiving the intelligence of the death of his two children. It is given as showing the heart of the man and his religious faith.

SAN FRANCISCO, July 28th, 1855.

Your's and E.'s of the 24th of June is received this day, and brings me good news, for it assures me that you are all alive and well. I

but along with this went an endowment of the keenest sensibility. At the reading of a noble sentiment or a touching incident, this would often show itself—trembling over into tears. The voice would fail and expression rise to the power of a speechless silence from the quivering intensity of feeling. When thoroughly roused in his own utterances his imagination would glow with true poetic fire. The golden ingots of his logic would melt and flow in streams of burning emotion. There was a large measure of that "sort of religious sensibility" which is said to have marked the greatest speeches of Webster's prime. But it was in his own family that these tenderer qualities showed themselves in their fullest power. It was there that his exhaustless stores of thought

have received since I have been here so much of bad tidings from home, that I open every letter with fear—but I trust that the full measure of chastisement is filled and that the residue of wrath will be mercifully restrained, until at least our bleeding wounds shall have time to heal, and the failing heart to recover its constancy, firmness and repose. The bitter agony, the deep, uncontrolled and uncontrollable wailing, the ceaseless repinings, are over with me—but still I remember what I never can and never desire to forget. In the hurry of business, in the excitements and exhaustion of daily labor, my thoughts are with the dead; and at night in the silence of my bed chamber they fly away like the dove from the ark of Noah, and seek the babes and strive for communion with them, in the habitations where they all dwell together. Their deaths, particularly the death of our son, have taught me lessons and have suggested and forced upon my attention views of life and death, of the present world and of that which is to come, to which I have long been measurably inattentive. With my general theological opinions you are acquainted—they have undergone no essential modification or change. They are the opinions which the lamented Doctor Channing has so fully illustrated in his sermons, and of the profitableness of which his whole life was a beautiful and all but faultless exhibition. Those doctrines reveal God to us as our Father—our *Father* in the highest and profoundest import. They further inculcate that he has a will concerning us—they give to that will the authority of law—they recognize human obedience as a duty, and make certain fixed consequences result from obedience, and another set of consequences the unchangeable and inevitable fruit of transgression. They teach us that the conditions of happiness in the future life are the same as those of the present—that death is a natural change only, and that the soul enters upon the future life with the same character it bore when it left this; and that in the world to come it will advance if it advance at all, by the same means that it works out its own character and tone in the world that now is. But these doctrines further reveal to us that in the progression of the eternities of God, the soul will of its own intelligent election cease from its warfare against its own highest good, and ceasing to do evil will learn to do well—*at last*. In these views there are presented most powerful motives to present obedience; whatever purification from sin and its contam-

and knowledge poured themselves forth untiringly in streams of wise and affectionate suggestion. His children tell me that they came to live on his words and to regard their author with an almost idolatrous reverence. If the Church was not visited on the Sabbath, as often during their early residence in Oakland it was not, they found a richer treat at home. The day was made sacred to them by words that kindled their higher purposes and lifted their souls to God.

But I must pause. The hour is gone, while the subject is still fresh. Poor tribute this that I bring to such worth, but it is an offering that the heart cannot refrain from making. We shall think to-day as a religious society of our great loss. The memory will run back four years

inations is accomplished here, but hastens the hour of completed regeneration hereafter—while every evil act performed here, every evil thought indulged here but delays and postpones the period of redemption. This theory of rewards and punishments recognizes the great primary truths of human accountability—presents adequate encouragements to virtue aud discouragements to vice—invests the soul with all needful powers for the achievement of its own highest good—and by making the ultimate attainment of that good an universal truth, vindicates at once the goodness and the wisdom of God in man's creation. E. asks, "Why are the young and beautiful snatched away and the aged permitted to remain?" It is a question that has often, very often, been asked before, and the most satisfactory answer that I have ever heard is, that it is the *will of God.* We are born to die, and to die is but to live again. We live here then simply that we may live hereafter—and that final, that higher, better and truer life is sure to follow life here, irrespective of its *duration*—the little child whose space is told by months alone, is as sure of its immortality as the grown man who dies weary and worn with the weight of years. The latter dies amid the shadows of evening following the endeavor and the exhaustion of a lengthened day; the former in the dewy freshness and soft effulgence of the early morning—this is the only difference. God wills it, and my daughter must reflect that He doeth all things well. I am more than gratified that you have learned what it is the end of all time to teach, the futility of earthly hopes, and that all substance, all reality, are beyond the bourne to which we hasten. Yet life here should not be set down as unimportant and valueless, for it is one of the appointments of God, which he has brightened with prospects and ennobled with duties, and they should be cheerfully and faithfully performed. They press upon us from day to day; we wake to them every morning; they challenge our attention and our efforts every moment, and wait patiently upon our slumbers during the silence and darkness of night; they should be performed cheerfully, courageously and in the patience of hope. There is impiety in saying, "I am weary of life." While it is continued, it should be cherished and improved. Viewed in its just relations to that which is to come, its importance is magnified and its deeper import fully revealed.

to the time when this man stood with us in our new enterprise, and opened his hand liberally to its wants. We shall connect the thought of him with that other great loss* which we so lately had occasion to deplore. We shall think of these two friends, who as they opened the doors of their homes each morning looked into each others faces, as communing again face to face in a higher home. And if it be true that the great and good look back from "The Better Land" upon the best interests of earth which they have joined in promoting, with a keen sympathy still, we must feel under the watch of such eyes that it will not do for us to be laggards in that good work to which they gave hand and voice, and then left for us to carry forward, as they went up to their reward.

* Hon. Edward Tompkins.

ACTION OF SUPREME COURT.

At the opening of the Supreme Court on Monday, November 23d, 1873, Wallace, C. J., and Crockett, Rhodes, Niles and Belcher, JJ., being present, Ex-Chief Justice S. W. Sanderson arose and said:

IF THE COURT PLEASE: At the April term of this court last past, upon my motion, a committee, consisting of members of the bar, was appointed to take such action as they might deem proper in respect to the death of the Honorable Oscar L. Shafter, late Associate Justice of this court, and report at the next term. The committee, as appointed, consisted, in addition to myself, of Ex-Chief Justices Lorenzo Sawyer and John Currey, Ex-Justice W. W. Cope, Attorney General John L. Love, and Messrs. Joseph P. Hoge, John B. Felton, John W. Dwinelle, Samuel M. Wilson, Edmond L. Goold and Hall McAllister. The committee, in discharge of the duty assigned them, came to the conclusion that the most fitting and proper notice that could be taken of the death of Judge Shafter would be to cause to be prepared a brief biographical sketch of his life and an analysis of his intellectual and moral character; and ask that it be spread upon the records of this court, and published in its reports. Pursuant to this determination, and at the request of the committee, the Honorable John W. Dwinelle consented to prepare and has prepared such a sketch, which I now have the honor to submit to the court; and ask that it be spread upon its minutes and published in its reports.

Ex-Chief Justice Sanderson then read the following

MEMORIAL

OSCAR LOVELL SHAFTER, late Associate Justice of this court, was born at Athens, Vermont, October 19th, 1812. He came of a patriotic and cultivated stock. His paternal grandfather, James Shafter, fought at Bunker Hill, Bennington and Saratoga, and was afterwards for twenty-five years a member of the Vermont Legislature. His own father was for several years County Judge; was a member of the Constitutional Convention of 1836; and more than once a member of the Legislature

He is described as being an able, intelligent and upright man. His wife, the mother of our deceased brother, was a woman of superior endowments; majestic in form, with a countenance of infinite expression, and possessing rare conversational and social qualities. She lived long enough to mould his character and fix his principles.

He was prepared for college at Wilbraham Academy, Massachusetts, and graduated at the Wesleyan University in 1834. He immediately commenced the study of law in a private office in Vermont. But he soon became dissatisfied with his progress; probably because the study of law, in a practicing office, is generally of a synthetical character, where a student, after becoming possessed of a few propositions, which to him are rather facts than principles, is at once initiated into the routine of practice. Such a method could not suit the analytical mind of young Shafter, and accordingly he entered the law school of Harvard University, under Judge Story, where he completed his law studies, and commenced the practice of the law at Wilmington, Vermont, in 1836 or 1837.

He won his way at once to the front rank of his profession. He became a member of the Legislature, and was the candidate of his party for Representative in Congress, Governor and United States Senator. He belonged to what was then known as the Liberty party, yet always appreciated the difficulties which encumbered the subject of slavery, and the embarrassments which surrounded the position of the South. He was consistent in these views to the last; but when the war had terminated believed that the militant spirit should subside, and was full of sympathy for the distresses of the South.

He was married to Miss Sarah Riddle in 1840. Of the children of this marriage six daughters survive. Two others, a daughter, and a promising son of seven years, died in their infancy.

For reasons which will soon become apparent, we epitomize his subsequent history. He came to California in 1854, practiced law with great success until January, 1864, when he took his seat as Associate Justice of this court for the term of ten years, which position he held until December, 1867, when he resigned his place on account of ill health, and afterwards went abroad, still failing in mind and body, and died at Florence, Italy, January 22d, 1873.

Judge Shafter arrived at San Francisco on November 13th, 1854,

without his family, and immediately entered upon the practice of his profession in connection with the leading firm of Halleck, Peachy, Billings & Park. During the next ensuing year, until the arrival of his family, he kept a journal, in which he entered his impressions of the climate and the scenery of California; his views of society and of the practice in the courts; many current events; some biographical sketches; and notices and analyses of the books which he read. But more especially is this brief diary remarkable for its manifestations of his deep affection for his family and other relations; for his diffidence of his own ability; and for the gradual growth of a self-confidence that he was equal to contend with the foremost leaders of the bar. It was during this period that he received intelligence of the death of two children within the period of a month—one of them the only son that he ever had. He appears to have been wholly inconsolable under this double bereavement, and could not refer to it for several years afterwards without expressions of almost uncontrollable grief.

In another place he says: "At home the familiarity that I had attained with the routine of questions ordinarily litigated, and perhaps the firmly-established position that I had secured among the lawyers of Vermont, left me, with my easy and sluggish temperament, with no incentive to exertion except a simple desire for further excellence. But here constant and unremitted occupation furnish new inducements, which supersede all inclination to indolence by intense activity and the higher modes of moral and intellectual life."

In commenting upon a life of Lord Mansfield which he had just been reading, he thus describes his own method of studying law: "I began with the most general principles of the science of the law, and from them proceeded to principles that were relatively subordinate to them, and so on through series after series of dependent truths until the final details had been examined and exhausted. In other words, I began with the *genera*, from them proceeded to an examination of the different *species* included in each *genus*, and from them to individual truths of which those species were severally constituted. It will be obvious to every one that the memory must be most powerfully aided by this method of study. The principles of law, though in one sense their name is legion, yet all bear relations to each other, and, taken together, form a system; and if once mastered in those relations, so long as one of these principles is retained by the mind the principle of association gives signal aid in recalling the others. I have for the last fifteen years prose-

cuted all my professional studies on the above plan, and although my memory is not remarkably tenacious, I have had no difficulty in remembering, when once acquired, all the details of legal truth that can be brought within the scope of legal principles. When I read a new decision I always ask myself the question: 'Whereabouts in the system of the law does the result ascertained belong?' In the twinkling of an eye its appropriate place is at once suggested to my thought and I put it in its place, and then I stop and look at it there, and I find by experience that it is very apt to stay there without watching until I want it."

These remarks were penned in the fulness of parental affection for the instruction of the infant son whom he afterwards lost, in case he should study law. They are full of matter which may be profitably pondered by practitioners as well as students of the legal profession. But they are doubly valuable at this time, because they indicate and illustrate Judge Shafter's methods and characteristics as lawyer and judge.

It was sometimes said of him, while at the bar, that he was slow in the preparation of his cases. This was only another mode of saying that when he encountered a case which presented elements that were new to him, he was never satisfied that it was fully prepared for trial, until he had subjected those elements to an analysis and classification which enabled him to master their minutest details.

So of his decisions as a Judge it was not seldom remarked that they savored of technical logic. But this was merely confounding logical analysis with the logic of the books. If his decisions have any prominent characteristic, it is that they present constantly the ruling presence of that faculty which combines the similar and rejects the dissimilar, and descends from the general to the specific. So that, in truth, his cases at the bar were not too laboriously prepared, nor his decisions from the bench too elaborately wrought. He merely applied to each the methods of study which are above described. As a consequence he was very successful at the bar, and his decisions from the bench have been rarely questioned.

While at the bar, no one was more scrupulous than he in the respect with which he treated the judiciary, both in bearing and in language. He regarded it as the palladium of our free institutions, and not to be desecrated by thought, word or deed. And when he came to the bench, he magnified his high office in the same spirit, and honored his

associates there. No one was more thoroughly imbued than he with that personality which made him identify with himself the highest function of the State, and with that impersonality which removed him from every influence except a desire for judicial truth.

He was very successful in gathering the material rewards of his professional labors, and by their judicious investment accumulated an opulent fortune.

We have spoken of his strong family affections. He was also an attached friend. His was not an impulsive nature, but his feelings were deep and permanent. He was remarkably genial in his social relations; he loved the society of young men, to talk with them, counsel them, encourage them in their plans and studies. His religious principles were fixed, and comprehensive enough to embrace all mankind. Exact in his business, he was yet bounteous and liberal in his benefactions. The large sums which he disbursed in this manner would never have been known, even to those who knew him best, if they had not been entered from mere habit in the accounts which he kept of all his expenditures. He could not listen unmoved to the cry of distress, and when it was sometimes urged that the objects of his bounty were probably unworthy, would reply that that responsibility was theirs and not his. He was an ardent student of nature, and loved to be a boy again amid mountains, forests, fields and waters. And on such occasions he showed an apt familiarity with the best poets of the English language, which caused it to be said of him that "he was a learned lawyer of an older school"—one whose reading was not of the law-books merely, but extensive, tasteful and varied. His sense of humor was great, and frequently illuminated his logic with a sudden flash of light. His language was generally elegant in its simplicity, but he did not reject the word which best expressed his meaning, no matter what its origin; and the occasional unconscious use of quaint expressions showed the extent of his reading among the older writers of our tongue.

Such is an imperfect outline of the man, the lawyer and the judge. It is full of example, of encouragement and of warning. Of example to those who are content with the rewards which belong to personal integrity, professional fidelity and political consistency. Of encouragement to those who are willing to win success as the prize of industry and perseverance. Of warning that there is a price too dear to be paid for great professional success, high position and abundant wealth; that

mind and body when overworked often react upon themselves and upon each other, and present the sad spectacle of a noble column riven from capital to base long before it topples to its fall.

The memorial having been read, and the Judges having signified their concurrence, the Chief Justice directed it to be spread upon the minutes of the Court, and to be published in the reports.

A large assemblage of the bar was in attendance during the proceedings, which were conducted with all the impressiveness and solemnity due to the memory of the distinguished deceased.

IN MEMORIAM.

LINES TO THE MEMORY OF OSCAR L. SHAFTER, WHO DIED IN FLORENCE, ITALY, AND WAS BURIED IN OAKLAND, CALIFORNIA.

[From the New York Evening Post.]

"Where the west wind blows through the evergreen trees,
And the fogs go sailing by,
'Mid the lupine blooms and humming bees,
'Tis there I fain would lie.

"These Italian skies are very fair,
Around are mosaics and sculptures rare,
And ruins of temples old;
And here, where the Arno's waters flow,
The gems of Raphael and Angelo
These princely galleries hold.

"But I'd rather sleep on the western shore,
Where the broad Pacific wave
In solemn music would grandly roar
A requiem o'er my grave."

Then bear him gently across the main,
And away toward the setting sun,
Though we never shall hear that voice again,
And his earthly task is done.

The eye is quenched that in sympathy glowed
For the wrongs of the struggling one,
And still the hand that so freely bestowed
The aid he denied to none.

But well he'll sleep on the western shore,
Where the broad Pacific wave
In solemn music shall grandly roar
A requiem o'er his grave.

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